

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

24207-10065

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on \_\_\_\_\_

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Application Number

10/765,014

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January 26, 2004

First Named Inventor

Craig Nevill-Manning

Art Unit

2169

Examiner

Miranda Le

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Brian Hoffman/

Signature

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

Brian M. Hoffman

Typed or printed name

☒ attorney or agent of record. 39713  
Registration number \_\_\_\_\_

(415) 875-2484

Telephone number

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

January 30, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below.

☐ \*Total of \_\_\_\_\_ forms are submitted.

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## **ATTACHMENT TO THE PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Pre-appeal review is requested because the rejections of record are clearly improper and without any factual or legal basis. Applicants respectfully request that the panel reconsider and lift the rejections of record.

### **I. Status of Claims**

Claims 1, 4, 5, 8-15, 18, 19, 22-28 and 32-40 are pending and stand finally rejected. Claims 2, 3, 6, 7, 16, 17, 20, 21 and 29-31 are canceled. Claims 1, 4, 5, 8-10, 15, 18, 19 and 22-24 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Manber (U.S. Patent No. 6,920,609) in view of Bailey (U.S. Patent No. 6,785,671). Claims 11-14, 25-28 and 36-40 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Manber in view of Bowman (U.S. Patent No. 7,124,129), and in further view of Bailey. Claims 32-35 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Manber in view of Bailey, and in further view of Bowman.

### **II. Argument**

For the purpose of clarity, Applicants' argument will address the rejections of claims 1, 4, 5, 8-10, 15, 18, 19, and 22-24 and then address the rejections of claims 11-14, 25-28 and 36-40.

#### **A. The cited references do not teach or suggest every limitation of claims 1 or 15**

Independent claim 1 recites elements related to receiving a search query and identifying a plurality of item identifiers responsive to the query. Specifically, independent claim 1 recites:

...selecting a first group of item identifiers from the plurality of item identifiers, wherein the first group of item identifiers was received from a **vendor feed**, the vendor feed comprising information from at least one vendor offering one or more items for sale;

selecting a second group of item identifiers from the plurality of item identifiers, wherein the second group of item identifiers was obtained by extraction of item identifiers from shopping documents offering one or more items for sale, the shopping documents not received directly from a vendor feed; and

displaying at least one item identifier from the first group in a visually distinct way from at least one item identifier from the second group.

Manber does not teach or suggest “selecting a first group of item identifiers received from a vendor feed” as recited in claim 1. Manber describes systems and methods for analyzing HTML formatted web pages to automatically identify and extract desired information. In the rejection of claim 1, the Examiner states that Manber discloses selecting a first group of item identifiers received from a vendor feed at column 5, lines 31-58. *See* FOA, p. 4. This portion of the reference describes identifying and extracting information from remote vendor servers but does not teach or suggest that the information is received from a vendor feed. Manber gives several examples of the types of content that can be accessed from remote servers, including news stories, advertising content, and search query results. Manber further states that this content can include objects such as video and audio clips, URL links, graphic and text objects, etc. These types of content and objects can be received via a variety of ways, and nothing in the reference implies that the content or objects are received via a feed. Thus, it follows that Manber does not teach or suggest selecting a first group of item identifiers received from a **vendor feed**. Only through impermissible hindsight analysis could a vendor feed be found in the non-specific disclosure of Manber.

In response to these arguments the Examiner points to Manber column 6, lines 1-25 as disclosing selecting a first group of item identifiers received from a vendor feed. *See* FOA, pp. 16-17. This portion merely describes a method for identifying and extracting information from remote vendor servers and translating the extracted information to portions of computer code; it does not teach or suggest that item identifiers are received from a vendor feed, much less selecting a first group of item identifiers received from the vendor feed.

Furthermore, the Examiner’s interpretation of claim 1 is clearly unreasonable. Claim 1 recites selecting first and second groups of item identifiers. The Examiner cites to Manber column 6, line 55 through column 7, line 28 as disclosing the claimed second group of item identifiers. *See* FOA, pp. 4-5. However, this portion of Manber describes the same “identification and extraction of information from remote vender servers” that the Examiner says discloses the first claimed group of item identifiers. Thus, the Examiner is citing the same feature in Manber as disclosing both the first and second claimed groups of item identifiers, and therefore must be interpreting claim 1 as having no distinction between the first and second claimed groups of item identifiers. However, this interpretation is clearly unreasonable because it provides no basis for “displaying at least one item identifier from the first group in a **visually**

**distinct way** from at least one item identifier from the second group” as recited in claim 1 (emphasis added).

Bailey does not remedy the deficiencies of Manber. Bailey discloses a search engine and a web crawler program to assist users in locating web pages from which user-specified products can be purchased. *See* Bailey, Abstract. However, Bailey does not teach or suggest selecting a first group of item identifiers received from a vendor feed as recited in independent claim 1.

The cited references therefore do not teach or suggest every element of independent claim 1. Independent claim 15 is not obvious for at least the same reasons as independent claim 1.

B. The cited references do not teach or suggest every limitation of claims 11 or 25

Independent claim 11 recites elements related to receiving a search query and identifying a plurality of item identifiers responsive to the query. Specifically, independent claim 11 recites:

... selecting a first group of item identifiers from the plurality of item identifiers;

determining a first degree of certainty that each item identifier from the first group of item identifiers has been **correctly** associated with a respective item;

selecting a second group of item identifiers from the plurality of item identifiers;

determining a second degree of certainty that each item identifier from the second group of item identifiers has been **correctly** associated with a respective item...

The Examiner uses Manber to support the rejection, but acknowledges that Manber does not specifically teach or suggest determining first and second degrees of certainty that item identifiers are correctly associated with respective items.

Bowman does not remedy the deficiencies of Manber. Bowman describes software for identifying the items most relevant to a current query based on a count of how frequently the items are selected in connection with the search queries. *See* Bowman, Abstract. However, using counting to determine relevance is not the same thing as determining a degree of certainty indicating correctness. In the rejection of claim 11 the Examiner states that Bowman discloses determining degrees of certainty that item identifiers are correctly associated with respective items at steps 801, 802 and 806 of FIG. 8. *See* FOA, p. 9. Steps 801 and 802 describe ranking items in a search result list by assigning a score to each item based on how frequently the items

are selected by users in connection with similar search queries. *See* Bowman, Abstract and column 8, lines 51-67. The terms used to retrieve each item are assigned a similar score. Step 806 describes combining the scores for the items and the scores for the terms to generate a “ranking” for each item in the search results. Bowman therefore discloses rankings that indicate how frequently an item is selected by users.

However, the “rankings” described by Bowman do not teach or suggest determining degrees of certainty that item identifiers are correctly associated with respective items as claimed. For example, if “Search Result A” has a higher ranking than “Search Result B,” then this ranking indicates that for similar search queries “Search Result A” has been selected more frequently than “Search Result B.” Bowman does not teach or suggest that these rankings can indicate whether “Search Result A” or “Search Result B” is **correctly** associated with a respective item. If Bowman ranked “Search Result A” ahead of “Search Result B,” the ranking would merely indicate that “Search Result A” has been selected more frequently than “Search Result B” and not indicate whether a result is correctly associated with a respective item. Thus, Bowman does not teach or suggest determining degrees of certainty that item identifiers are correctly associated with respective items.

In response to these arguments, the Examiner points to the combination of Manber column 3, lines 1-24 and Bowman column 5, lines 27-43 as disclosing determining degrees of certainty that item identifiers are correctly associated with respective items. *See* FOA, pp. 18-19. Manber column 3, lines 1-24 discloses comparing a first string extracted from a first page against a second string extracted from a second page to determine the similarity between the first and second strings. Bowman column 5, lines 27-43 discloses a rating score that indicates how frequently a given item identifier is selected for a given query term. Thus, at most Manber discloses determining the similarity of two strings and Bowman discloses counting to determine how frequently item identifiers are selected for a given query term. Neither Manber nor Bowman teaches or suggests information about whether item identifiers are **correctly** associated with respective items. Thus, Manber and Bowman, alone or in the combination suggested by the Examiner, do not teach or suggest every limitation of claim 11.

Bailey does not remedy the deficiencies of Manber and Bowman. The cited references therefore do not teach or suggest every element of independent claim 11. Independent claim 25 is not obvious for at least the same reasons as independent claim 11.

Accordingly, Appellants respectfully submit that the cited references do not teach or suggest every element of the independent claims. The dependent claims incorporate the elements of their base claims, and are therefore not obvious for at least the same reasons. Therefore, a person of ordinary skill in the art would considering the references either individually or in combination would not find the claimed invention obvious. For this reason, Appellants request that the Panel overturn the rejection of the claims.

Respectfully submitted,  
CRAIG NEVILL-MANNING, ET AL.

Dated: January 30, 2009

By: /Brian Hoffman/  
Brian M. Hoffman, Reg. No. 39, 713  
Fenwick & West LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Tel.: (415) 875-2484  
Fax: (415) 281-1350